



The Corporation Tax Bureau denied permission to file a combined return, and issued statements of audit adjustment and notices of deficiency taxing the corporations on an individual basis as follows:

W-F	
<u>Calendar Year 1971</u>	
Tax on individual basis	\$15,033.00
Tax per return	38,130.00
Credit	23,097.00

Wheelabrator	
<u>Period 1/1/71 to 11/4/71</u>	
Tax on individual basis	\$57,718.00
Tax per return	125.00
Deficiency	57,593.00

Bell	
<u>Period 1/1/71 to 11/4/71</u>	
Tax on individual basis	\$11,393.00
Tax per return	125.00
Deficiency	11,268.00

Frye	
<u>Period 1/1/71 to 11/4/71</u>	
Tax on individual basis	\$12,335.00
Tax per return	125.00
Deficiency	12,210.00

(2) The taxpayer claims that it received oral permission to file a combined return in a telephone conversation with a senior corporation tax examiner in the Albany office of the Corporation Tax Bureau. However, that person denies that he ever gave such permission to any taxpayer, since he did not have authority to pass on combined returns. He worked on matters pertaining to mergers. As is customary, in order not to hold up the merger, the taxpayer was given permission to file estimated returns for Wheelabrator, Bell and Frye, and the completed reports were to be filed at the same time that the survivor, W-F, filed its completed report. Through some misunderstanding, the taxpayer believed that it was given permission to file a combined return.

(3) The stock ownership and activities of the respective corporations, prior to the merger on 11/4/71, were as follows:

(a) W-F was a holding company and owned 51.7% of the voting stock of Bell, the value of which was shown as subsidiary capital of \$20,112,914 on W-F's return for 1971. In addition, the return indicated that W-F had subsidiary capital aggregating \$24,054,384 in eight other subsidiaries. W-F provided services to Bell in the form of management, legal, tax, accounting, etc.

(b) Bell was a holding company and owned 80.7% of the voting stock of Wheelabrator and 66.1% of the voting stock of Frye. In addition, it owned stock in five other subsidiaries. Bell performed services for Wheelabrator and Frye in the form of management, legal, tax, accounting, etc.

(c) Wheelabrator was an operating company and was engaged in the manufacture of metal cleaning equipment.

(d) Frye was an operating company and was engaged in the manufacture of reproduction papers and printing inks.

(4) Section 211.4 of the tax law reads in part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a report on a combined basis covering any other such corporations . . . "

(5) Section 5.28d of Ruling of the State Tax Commission dated March 14, 1962 reads in part:

"What constitutes 'substantially all' the capital stock of a corporation, within the meaning of the foregoing provisions, will be determined on the basis of the facts in each case, but ordinarily the beneficial ownership or control of 95% or more of the issued and outstanding capital stock entitling the holders to vote for the election of directors or trustees will be considered as meeting the test laid down in the statute . . . "

The State Tax Commission hereby

DECIDES:

(A) The test of stock ownership is not met in this case because the respective ownership of 51.7%, 80.7% and 66.1% as indicated at (3) falls substantially below the basic ownership requirement of 95%.

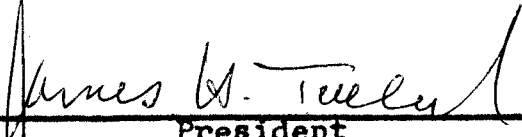
(B) In addition, W-F and Bell were holding companies whereas Wheelabrator and Frye were operating companies carrying on their own separate manufacturing activities. In weighing the extent of the services performed by W-F and Bell for the respective subsidiaries, it is obvious that the profit or loss of each corporation was primarily the result of its own operations, and not due to inter-company transactions. Under such circumstances, a combined return would produce a distorted result in that the losses of W-F and Bell would be offset against the profits of Wheelabrator and Frye, and a combined allocation percentage would supplant the individual allocation percentage of each corporation. It is the consistent policy of the Tax Commission not to permit or require a combined return where taxation on an individual basis produces a more proper result.


(C) The credit to W-F and the deficiencies against Wheelabrator, Bell and Frye as indicated in (1) are affirmed, together with interest in accordance with Section 1084 of the tax law.

Dated: Albany, New York

this 14th Day of August 1975.

STATE TAX COMMISSION

  
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President

  
\_\_\_\_\_  
Commissioner

  
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Commissioner